Attorney's Docket No. 40989/237225(9280-12)

#8 1638

PATENT

11/14/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Stomp et al.	Confirmation No.	8799
Appl. No.:	09/915,873	Group Art Unit:	1638
Filed:	July 26, 2001	Examiner:	Georgia L. Helmer
For:	EXPRESSION OF BIOLOGICALLY ACTIVE POLYPEPTIDES IN DUCKWEED		

November 4, 2002

Commissioner for Patents
Washington, DC 20231

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated October 3, 2002, in which the Examiner has required restriction between Group I, namely claims 1-26; Group II, namely claims 26-28; and Group III, namely claims 29-34. Applicant hereby provisionally elects with traverse to prosecute the claims of Group I (claims 1-26) and expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Group I (claims 1-26) is drawn to methods of producing biologically active recombinant polypeptides in a duckweed plant culture or a duckweed nodule culture. The methods of claims 21 and 22 recite the nucleic acid molecules of claim 29 (Group III), and claims 30, 33, and 34 depend from claim 29. Therefore, it is submitted that the search to determine the patentability of the methods of Group I will encompass the search necessary to determine the patentability of the nucleic acid molecules of Group III.

Section 803 of the Manual of Patent Examining Procedure (MPEP) provides that there are two criteria that must be met in order for restriction between patentably distinct inventions to be proper: "(A) The inventions must be independent . . . or distinct as claimed; and (B) There must be a serious burden on the examiner if restriction is required." MPEP § 803 further provides that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Because the nucleic acid molecules of Group III are specifically recited in the method claims of Group I, there would be no serious burden on the

Examiner of these Groups were examined together. For these reasons, it is requested that Groups I and III (claims 1-26 and 29-34) be examined together.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned agent so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Washington, DC 20231 on November 4, 2002.

Nora C. Martinez

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